IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 490 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANUSIH MANSIH SOLANKI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR SK PATEL for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 13/09/2005

ORAL JUDGMENT

1. Rule. Mr. HM Prachchhak, learned APP appears and waives service of notice of rule on behalf of

respondent No.1 – State whereas Hariprasad Mohanlal Upadhyay, respondent No.2 party in person is personally present in court and waives service of notice of rule.

2. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the applicant seeks to challenge the judgment and order dated 27.6.2005 rendered in Criminal Appeal No.25 of 2001 by the learned Additional Sessions Judge and Fast Track Judge, Modasa by which the appeal filed by the petitioner came to be dismissed and thereby judgment and order dated 17.7.2001 rendered in Criminal Case No.1364 of 1993 by the learned JMFC, Modasa recording order of conviction and sentence by which the petitioner is ordered to suffer RI for six months and to pay fine of Rs.5000/- for commission of alleged offence under section 138 of the Negotiable Instruments Act ('the Act' for short) has been affirmed.

2. At the time of hearing of this petition, the

applicant and respondent No.2 have jointly submitted that they have settled the matter amicably outside the court and by virtue of the said settlement the applicant has already paid Rs.12,000/- in cash to respondent No.2/original complainant which has been accepted and acknowledged by him. They have also presented a written consent terms which is duly signed by the applicant and respondent No.2 and the learned advocate of the applicant. They therefore urged that in exercise of powers under section 147 of the Act the matter may be compounded and order of conviction and sentence recorded against the applicant by the learned JMFC Modasa in Criminal Case No.1364 of 1993 may be quashed and set aside in exercise of powers conferred under Section 147 of the Act.

3. Mr. HM Prachchhak, learned APP for respondent No.1 State, states that in view of the statutory provisions contained in section 147 of the Act since the matter has been amicably settled between the parties by the applicant paying Rs.12,000/- in cash to respondent No.2/original complainant appropriate

order may be passed by this Court.

4. This Court has considered the submissions advanced by Mr. Deepak Patel, learned advocate for Mr. SK Patel, learned advocate for the applicant, Mr. Prachchhak learned APP for respondent No.1 State and Mr. Hariprasad Mohanlal Upadhyay, respondent No.2/ original complainant who is present in Court in person and perused the consent terms which is duly signed by the applicant and respondent No.2 and the learned advocate for the applicant and the provisions of Act.

5. As per the consent terms, the applicant and respondent No.2 have settled the dispute arising from Criminal Case No.1364 of 1993 which has been disposed of by the learned JMFC Modasa. As per the order passed by the learned JMFC Modasa in the said criminal case, the applicant has been convicted and sentenced to undergo RI for six months and to pay fine of Rs.5,000/- Against the said order of the learned JMFC, Modasa, the applicant filed Criminal Appeal No.25 of 2001 which came to be dismissed.

As per the settlement between the parties, the applicant has already paid in cash Rs.12,000/- to the respondent No.2/original complainant which has been accepted and acknowledged by respondent No.2.

6. In aforesaid view of the matter, the impugned order of conviction and sentence recorded by learned JMFC Modasa in Criminal case No.1364 of 1993 which has been affirmed by the learned Additional sessions Judge and Fast Track Judge, Modasa in Criminal Appeal No.25 of 2001 deserves to be quashed and set aside in exercise of the powers conferred under Section 147 of the Act and the applicant deserves to be acquitted of the offence with which he was charged.

7. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned judgment and order of conviction and sentence passed by the learned JMFC Modasa in Criminal Case No. 1364 of 1993 which has been affirmed by the learned Additional Sessions Judge and Fast Track Judge, Modasa in Criminal Appeal No.25 of 2001 is hereby quashed and set aside the result of which is that the applicant

is acquitted of the offence with which he was charged. The amount of fine of Rs.5,000/- which has been deposited by the applicant in the trial court shall be returned to the applicant by the trial court on due verification. Rule is made absolute accordingly to the aforesaid extent. DS is permitted.

(A.M. Kapadia, J.)

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